

City Council of the Mayor and Council of New Castle
Public Hearing
201 Delaware Street – New Castle
Tuesday – August 30, 2011 – 6 p.m.

Present:

Council President William Barthel
Councilperson John Cochran
Councilperson John Gaworski
Councilperson Ted Megginson

Absent: Councilperson Teel Petty

Also present: City Administrator Cathryn Thomas, City Solicitor Dan Losco, City Planner Marian Hull

The Public Hearing was to accept comments on Ordinance No. 485, which proposes to amend the New Castle City Code, § 230-11. Gradual elimination of certain uses. Council President Barthel summarized what is contained in Ordinance No. 485.

Mr. Barthel asked for comments from the floor.

Mr. John Bloxom is an attorney and partner with the law firm of Morris James, representing Almars Outboards, 70198 Washington Associates. Mr. Bloxom stated he has appeared before Council and the Planning Commission in support of this Ordinance, and wants to reiterate the support of his clients for this ordinance. The Downtown Gateway Zoning District which will be created by the proactive zoning is transformative to the area, it provides for more dense uses in that area, and it will contribute to values of properties in the area. It would be a tragedy if 230-11 remains in its present form and puts existing businesses out of business.

Ms. Janet Koczak of Washington Square was concerned about terminating existing businesses and is glad Council is addressing the problem with this ordinance. She stated that she feels that even though this could cost the business owners some money, it is a good solution, as it will address the screening issue without putting our blue collar businesses out of business.

City Planner Marian Hull had the following comments:

City Engineer David Athey has had an opportunity to look at Ordinance No. 485 and has suggestions Council might want to consider:

- Wording in C-2 "...opaque screen shall exclude all visual contact with the screened use, and may be composed of..." – the Engineer thought *all* might be a difficult standard to meet 100% of the time, however it might say "...opaque screen shall exclude visual contact."
- Another issue Mr. Athey brought up was the review process, where the City Administrator shall have 45 days and he suggested specifying 45 *calendar* days.

- In 4-C, in the case applicant disagrees with decision of City Administrator, the applicant may appeal to Board of Adjustment, the City Engineer suggested Council might want to consider waiving the \$600 application fee, with the assumption that these will be city residents and the purpose of this ordinance is to remove the burden from local business owners.

City Solicitor Dan Losco had the following comments:

- Mr. Losco had also considered wording in C-2 "...opaque screen shall exclude all visual contact with the screened use..." and that *all* may be an impossibility and that alternate wording could be, "...shall substantially exclude all visible contact."
- In the first sentence, this is restricted strictly to the Gateway District. If there are other rezonings in the future which convert a legal legitimate use into a nonconforming use, the City should not give special consideration to properties converted to the nonconforming status only in the Gateway District, as this could apply to other zoning districts as well.

Ms. Hull noted that, if we eliminate, "...within the Gateway District..." making it just nonconforming, we need to take a closer look to make sure we aren't doing something we don't mean to do. Within the Gateway District, there are several very specific uses we are concerned about. Section 230-11 also talks about junkyards and billboards. We don't currently have a junkyard in the City, and Billboards cannot be screened, that would defeat the purpose.

Everything mentioned in Section 230-11 prior to "C" would be an opportunity to screen. This new "C" only applies to outdoor uses mentioned in 230-11 B-2 in the current code.

Mayor Reese asked Council to define the areas that would be impacted by this Ordinance.

Ms. Hull said that would include two areas of the City: the Ferry Cut-Off area and the area of 7th and South Streets.

Councilperson Gaworski made a Motion to adjourn the Public Hearing and go into a Special Council meeting. The Motion was Seconded by Councilperson Megginson and passed unanimously.

The Public Hearing was adjourned at 6:20 p.m.

Respectfully submitted,

Kim Burgmuller

City Council of the Mayor and Council of New Castle
Special City Council Meeting at Town Hall
201 Delaware Street – New Castle
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Council President William Barthel
Councilperson John Cochran
Councilperson John Gaworski
Councilperson Ted Megginson

Absent: Councilperson Teel Petty

Also present: City Administrator Cathryn Thomas, City Solicitor Dan Losco, City Planner Marian Hull

Council President Barthel completed the first and second reading of Ordinance No. 485 to amend the New Castle City Code, § 230-11. Gradual elimination of certain uses.

Motion, Discussion and Vote on Resolution No. 2011-29, approving and authorizing the Council President and/or City Administrator to sign an Agreement of Conveyance between the City and the Trust for Public Land, to further move toward finalization of the City purchasing property from the Immanuel Episcopal Church, to be known as the Broad Dike Wetlands Natural Area.

The Trust for Public Land has the option to acquire the property and this agreement of conveyance is transferring their rights to the City, avoiding additional fees.

A Motion was made by Councilperson Megginson to approve Resolution No. 2011-29, and Seconded by Councilperson Cochran, and passed unanimously.

Motion, Discussion and Vote on Resolution No. 2011-30, to approve filling a vacancy for an Equipment Operator in the Public Works section of the Public Services department.

A Motion was made by Councilperson Megginson to approve Resolution No. 2011-30, and Seconded by Councilperson Gaworski, and passed unanimously.

Motion, Discussion and Vote on Resolution No. 2011-31, to consider approval of a Minor Subdivision for properties located at 401, 403 and 405 Williams Street.

A Motion was made by Councilperson Gaworski to approve Resolution No. 2011-31, and Seconded by Councilperson Megginson, and passed unanimously.

Motion, Discussion and Vote on Resolution No. 2011-32, to consider granting special dispensation to Signature Homes for properties at 536, 538, 540 and 542 Arrowgrass Lane and 807 Lamprey Lane, concerning a requirement and condition contained in the Riverbend Subdivision Declaration of Restrictions, that, "...the exterior walls (front, sides and rears) of all residences

constructed in the Development shall be constructed of natural materials (i.e. stone, brick, stucco, wood, etc.).

A discussion was held on how this occurred, what were the contributing factors and what we can do moving forward to keep this from happening again.

Council President Barthel asked the City Solicitor if this resolution only applies to the properties listed, and if not, how do we make sure other parties who might assume ownership of these lots would still be bound by the original building restrictions?

City Solicitor Dan Losco stated that the City already has a declaration of restrictions on record for current or future owners of these properties that restrict the type of exterior materials which may be used. These properties slipped through the cracks, and were built with vinyl siding, and the developer has asked for relief, in this instance from the restrictions.

Moving forward, owners of these lots will still be bound by the original restrictions against non-natural materials. This is to grant an exemption for the five homes that are already built.

Mr. Losco also said that all issues associated with Signature Properties involving payment of inspection fees and proper hook-ups with MSC for water and electric have been accomplished.

All parties involved have signed a copy of the First Amendment to the Declaration of Restrictions. Additionally, a number of lots are still owned by Parkway Gravel. They are not a party to this and are not likely to sign the amendment. They are, however, still bound by the restrictions.

Mr. Losco has recommended to Council that an ordinance be drafted that empowers the City to withhold Building Permits and Certificates of Occupancy for any party in any development where there are violations of restrictions.

Councilperson Cochran asked why we are looking for relief when the builder knew they needed to use particular materials.

Mr. Losco stated that this one slipped by us, the City approved building permits with vinyl siding disclosed in the building plans. The homes are built, it would be expensive to make replacements, and the current siding contributes to the insulation of the home. Replacing it would reduce the "R-value" below state standards.

Councilperson Cochran asked what the cost would be to replace the current vinyl siding with natural materials.

The builder stated that it would be difficult to determine the actual cost, due to the insulation factors. The insulating effect of the present siding allowed them to build the homes with 2 x 4's and if the siding's insulation factor were removed, they would need to use 2 x 6's to be able to get the same insulating effect. This would result in changing the very structure of the homes.

Mr. Losco concluded that while this is a no win situation, and restrictions are there for a reason, this is a large subdivision. When built out, these five homes will not detract from the whole. He also wanted to emphasize the City has had significant cooperation from the Riverbend community to correct inspection-related problems with MSC.

Motion was made by Councilperson Megginson to approve Resolution No. 2011-32, and Seconded by Councilperson Gaworski, and passed with all Council members voting aye except that Councilperson Cochran voted nay.

A motion was made and seconded to adjourn the Special Meeting, and it was passed unanimously, and the meeting adjourned at 6:45 p.m.

Respectfully submitted,

Kim Burgmüller